



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 07, 2023

IN THE MATTER OF:

Appeal Board No. 627462

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective September 25, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 25, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference. There were appearances by the claimant and on behalf of the employer. By decision filed January 06, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by a homeless service organization as a housing advocate for over two years until September 24, 2021. The employer's protocol required employees to complete a COVID screening questionnaire at the beginning of their shift. The protocol also required that an employee report experiencing COVID-19 symptoms to a supervisor. The claimant was aware of the protocol. On August 14 and August 15, 2021, the claimant reported to work but did not complete a COVID screening questionnaire. On August 15, the claimant took a COVID-19 test. She tested positive and later submitted her results to the employer. The employer's program director asked the claimant when she first started to experience

symptoms. The claimant told her that she began sneezing on August 14. She did not report the sneezing earlier because she believed it was due to allergies. On August 17, the employer issued written warning to the claimant for failing to submit her COVID-19 test result on time. On September 28, 2021, the employer discharged the claimant because it determined that she did not complete the COVID screening questionnaire and did not report to the employer that she was sneezing. The claimant had not received any warnings prior to the August 14 and August 15 incidents.

OPINION: The credible evidence establishes that the employer discharged the claimant because it concluded that she did not complete the COVID screening questionnaire and did not report to the employer that she was sneezing. While the employer contended that the claimant received a prior warning, it admitted that the warning was not issued until August 17, 2021, which was after the August 14 and August 15, 2021 incidents.

The record fails to establish that the claimant was aware that her failure to complete the daily COVID screening questionnaire and her failure to report her sneezing would jeopardize her employment. Absent such evidence, her behavior amounted to, at most, poor judgment. Accordingly, we conclude that the claimant did not lose her employment due to misconduct and that her employment ended under non-disqualifying conditions.

DECISION: The decision of the Administrative Law Judge is affirmed.

The initial determination, disqualifying the claimant from receiving benefits, effective September 25, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 25, 2021 cannot be used toward the establishment of a claim for benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER